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Unmodified opinion attached

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re A.S., a Person Coming Under
the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.S. et al.,

Defendants and Appellants.

B289737

(Los Angeles County
Super. Ct. No. 18CCJP00162A)

THE COURT:

The opinion herein, filed on January 29, 2019, is modified
as follows:

On the caption page, the superior court case number should
be corrected to read: 18CCJP00162A.

There is no change in the judgment.

BIGELOW, P. J.

STRATTON, J

RUBIN, J.*

* Presiding Justice of the Court of Appeal, Second Appellate.
District, Division Five, assigned by the Chief Justice pursuant to
article VI, section 6 of the California Constitution.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

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18CCJP00162A)

APPEAL from orders of the Superior Court of Los Angeles County, Danette J. Gomez, Judge. Dismissed.

Andre F. F. Toscano, under appointment by the Court of Appeal, for Defendant and Appellant M.S.

Megan Turkat Schirn, under appointment by the Court of Appeal, for Defendant and Appellant A.S.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Tracey F. Dodds, Principal Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

The question presented is whether this court should decide an issue that has become moot since the notices of appeal were filed. Parents argue that the juvenile court's jurisdictional findings stigmatize them. Specifically, the juvenile court found that 16-year-old Alyssa's parents failed to protect her from undisputed sexual abuse she suffered for at least six years at the hands of her older brother. Since the filing of the notices of appeal, the juvenile court has terminated jurisdiction and returned Alyssa to her parents' custody. Parents nonetheless want this court to review and overturn the juvenile court's findings and order. For the reasons set out below, we decline to do so and dismiss Mother's and Father's appeals as moot.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Investigation, Petition, and Detention*

On December 19, 2017, DCFS received a referral from Alyssa's therapist, who reported that Alyssa disclosed she was sexually abused by her older brother when she was five years old until she was about 11 or 12 years old. Alyssa's older brother, Aaron, is eight years older than Alyssa. The therapist stated that the sexual abuse had happened in the family home, and that Alyssa disclosed there was "penile to vaginal penetration . . . once or twice a month for about 6–7 years," until she reached age 12 and Aaron was age 20. Aaron continued to reside in the family home. The therapist's report not only triggered a referral to

DCFS, but also caused a criminal investigation to commence against Aaron.

On January 3, 2018, DCFS began interviewing members of Alyssa's family. Father stated that the family enforced a "house rule[]" of "keeping the doors open and unlocked when in the home, unless the children were changing or need[ed] moments of privacy." He recalled a single, "isolated incident" between Aaron and Alyssa when they were ages 13 and five, respectively, where Alyssa was standing in front of Aaron with her panties down, while Aaron had his hand in her private area. Father reprimanded Aaron, and Mother discussed the difference between "good touch and bad touch." Mother sought professional help, but was advised by the therapist to "handle it on [their] own" or else he "would have had to report it because he was a mandated reporter." Thus, Mother and Father handled it on their own; they attended parenting skills classes to "educate themselves on how to educate their children that this kind of behavior was no [sic] ok." Both Father and Mother reiterated that they believed the prior incident was a "form of exploration and curiosity" and they repeatedly stated they did not know the sexual abuse continued until Alyssa reached age 11 or 12. Indeed the social worker stated they were "very upset" and "appeared to look as though this was the first time" they heard about any sexual abuse occurring after the "isolated incident." They stated that "Alyssa never disclosed any sexual abuse to [Mother] or her father." They were also very upset that law enforcement interviewed Alyssa without their consent and accused the social worker of "twisting the family's words around."

Alyssa stated she cannot recall the exact age when the sexual abuse started, but remembered Aaron would call her to his bedroom to help him clean it or to search for something. Then

he would lock his bedroom door and rape her. She disclosed there was “penile to vaginal penetration . . . once or twice a month for about 6–7 years”; when Alyssa was 12 and Aaron was 20, he sat her on the washer, pulled down her pants, “looked inside of her pants at her vagina and told Alyssa [that] she was getting older now” and “stopped having sex with her.” She stated she currently did not feel afraid or unsafe in the home, but felt “weird with Aaron living in the home.”

Alyssa told the social worker that when she was “around middle school age,” she “felt the sexual abuse . . . burning inside of her” and decided to tell Mother about Aaron’s ongoing sexual abuse of her. Alyssa told Mother that Aaron had been raping her “for a while and [that it] happened numerous times.” According to Alyssa, Mother “began to break down, began crying and was very upset.” Mother then talked to Aaron the next day and had a “family meeting,” where he “confessed to the sexual abuse” and “want[ed] [Alyssa] to forgive him.”

Mother and Father, however, denied having a family meeting about Aaron’s continued sexual abuse of Alyssa, as they said they were not aware of any abuse having taken place between Aaron and Alyssa after the “isolated incident” when Aaron’s hand was on five-year-old Alyssa’s private parts. Mother stated that, throughout the years, they had “several family meetings and would talk to each other in regards to our feeling[s] but nothing [about the abuse] was ever brought up.”

Alyssa’s other adult brother, Morgan, age 19, told the social worker he recalls a family meeting five years ago where Aaron’s sexual abuse was brought up, and Mother wanted to know what had happened; however, Morgan did not remember “exact details” about the meeting. Morgan also remembered Alyssa telling him that “Aaron did stuff to her when we were young” and

he remembers “not wanting to believe it because it was too much for [him] to handle.”

On January 9, 2018, DCFS filed a petition under Welfare and Institutions Code¹ section 300, subdivisions (b)(1) and (d), alleging that: 1) Alyssa was “sexually abused” and “forcibly rap[ed]” by Aaron on “numerous prior occasions”; 2) Mother and Father “knew that the child’s sibling was sexually abusing the child” and “failed to protect the child” in that they allowed Aaron “unlimited access to the child”; and 3) Aaron’s sexual abuse of Alyssa coupled with the parents’ failure to protect Alyssa “endanger[ed] the child’s physical health and safety, plac[ed] the child . . . at risk of suffering serious physical harm, damage, danger, [and] sexual abuse.”

At the detention hearing on January 10, 2018, both Mother and Father appeared before the court; they requested that Alyssa be released to them as they had caused Aaron to move out of their family home earlier that day and obtained his key to the home.² Mother and Father stated they would “forthwith change the locks and the security codes to the alarm system” of the family home. Minor’s counsel stated that Alyssa wanted to return to her home, but that counsel asked the court not to return Alyssa until there was confirmation that Aaron “is out of the home, that the locks have been changed and . . . that a safety plan is in place.” The juvenile court released Alyssa to her parents, but stayed the release “pending confirmation by [DCFS]

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² Aaron moved out of the family home and moved in with his girlfriend.

that Aaron has moved out of the home, [and that] both parents have enrolled in sexual abuse prevention programs.” The court also ordered Mother and Father not to discuss the case with Alyssa, that Aaron not have contact with Alyssa either at the family home or at school, and for Alyssa’s other siblings not “to communicate with Alyssa anything that Aaron tells them about the issues.” DCFS was also authorized by the court to make unannounced home visits to ensure Alyssa’s parents were following the court’s orders.

B. *Jurisdiction and Disposition*

During the adjudication hearing on April 26, 2018, the juvenile court heard testimony from Mother and Father. Father testified that he had no recollection of a family meeting where Aaron’s sexual abuse of Alyssa was discussed. Mother testified she was currently participating in individual counseling as well as in Alyssa’s therapy. She denied there being any “specific meeting where [the sexual abuse] was the topic.” When confronted about Morgan’s statements to the social worker where he said Aaron’s sexual abuse of Alyssa “was brought up . . . about five years ago in a family meeting,” Mother testified that “it was brought up, but it wasn’t like the focus of the meeting.” Mother said that Aaron apologized to Alyssa, and she assumed it was regarding the incident that took place when Alyssa was four or five years old.

Father argued the petition should be dismissed because there was no current risk of future harm to Alyssa—the abuse ended five years ago and Aaron no longer resided at the family home. Mother joined the argument and added that although Aaron had sexually abused Alyssa, Mother and Father should not be included in the section 300, subsection (d), allegation because

“the parents were appropriate [in their actions] and . . . should be stricken from the (d) count, even if the court sustained the 300(d) allegation with just the minor in it.”

At the conclusion of argument, the juvenile court amended the petition to conform to proof and sustained counts b-1 and d-1.³ The court declared Alyssa a dependent of the juvenile court and released her to the home of her parents. The court stated that “[t]his is very difficult for the court” because it “really believe[d] that [Mother and Father] are very good and decent people”; however, “[w]hat[] troubl[ed] . . . the court is . . . when this guidance was sought from this therapist, . . . the court can’t help but feel that you abdicated your roles as parents to this therapist.” The court further stated that the parent’s “fail[ure] to believe [their] daughter is another form, at least in the court’s perspective, of re-traumatizing an individual that’s already been

³ As amended by interlineation, sustained allegations b-1 and d-1 of the petition state:

“On numerous prior occasions occurring since the child Alyssa [S.] was 5 years old[,] the child’s sibling Aaron [S.] . . . sexually abused the child by forcibly raping the child, by engaging in sexual intercourse with the child and by placing the sibling’s penis in the child Alyssa’s vagina. The child’s parents . . . knew that the child’s sibling had sexually abused the child on one occasion and the parents failed to protect the child. The parents allowed the child’s sibling . . . unlimited access to the child even after the child . . . disclosed further abuse when she was in middle school. The sexual abuse of the child . . . by the child’s sibling . . . and the parents['] failure to protect the child endangers the child’s physical health and safety, placing the child . . . at risk of suffering serious physical harm, damage, danger, sexual abuse[,] and failure to protect.”

abused.” The court “really want[ed] Alyssa to get the help she needs” and thought “it’s important for this family to have services and oversight for all of that to happen.” The court thus ordered DCFS to provide family maintenance services to Alyssa and her parents; the parents were ordered to participate in sexual abuse awareness counseling and individual counseling, while Alyssa was ordered to participate in individual counseling and conjoint counseling with the parents.

Mother and Father each timely noticed their appeal.

On October 25, 2018, while this appeal was pending, the juvenile court terminated its jurisdiction over Alyssa, and ordered her released to her parents.⁴ In terminating jurisdiction, the court found “those conditions which would justify the initial assumption of jurisdiction under . . . section 300 no longer exist and are not likely to exist if supervision is withdrawn and the [c]ourt terminates jurisdiction.”

DISCUSSION

“As a general rule, an order terminating juvenile court jurisdiction renders an appeal from a previous order in the dependency proceedings moot.” (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1488.) “[A]n appeal presenting only abstract or academic questions is subject to dismissal as moot.” (*In re Jody R.* (1990) 218 Cal.App.3d 1615, 1621.) “‘A reversal in such a case would be without practical effect, and the appeal will

⁴ We grant DCFS’s request to take judicial notice of the orders terminating dependency jurisdiction and returning Alyssa to Mother and Father. (Evid. Code, §§ 452, subd. (d), & 459.) Neither parent opposed DCFS’s request for judicial notice of the October 25, 2018 minute order.

therefore be dismissed.’ ” (*In re Dani R.* (2001) 89 Cal.App.4th 402, 404.)

However, the appellate court may find that the judgment dismissing the dependency action that is challenged on appeal “ ‘is not moot *if* the purported error is of such magnitude as to infect the outcome of [subsequent proceedings] *or* where the alleged defect undermines the juvenile court’s initial jurisdictional finding.’ ” (*In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1547, quoting *In re Kristin B.* (1986) 187 Cal.App.3d 596, 605). We may also decline dismissal of the appeal where the jurisdictional findings could affect the parent in the future (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1432; accord, *In re Daisy H.* (2011) 192 Cal.App.4th 713, 716 [An appellate court ordinarily will not dismiss as moot a parent’s challenge to a jurisdictional finding if the purported error “could have severe and unfair consequences to [the parent] in future family law or dependency proceedings.”]), or where review is necessary because the issue rendered moot by subsequent events is of continuing public importance and is a question capable of repetition, yet evading review. (*In re Anna S.* (2010) 180 Cal.App.4th 1489, 1498.)

“We decide on a case-by-case basis whether subsequent events in a juvenile dependency matter make a case moot and whether our decision would affect the outcome in a subsequent proceeding.” (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1404; *In re Kristin B.*, *supra*, 187 Cal.App.3d at p. 605.)

Here, Father and Mother contend the juvenile court erred in assuming jurisdiction over Alyssa because the evidence was insufficient to support a finding that Alyssa was at substantial risk of future harm because the sexual abuse by her older brother ended five years before and her brother was barred from the

family home.⁵ The issue, however, of whether substantial evidence existed to support the juvenile court's exercise of jurisdiction and the disposition have been rendered moot by the subsequent order terminating dependency jurisdiction over Alyssa and returning her to the custody and home of her parents.

Citing *In re I.C.* (2018) 4 Cal.5th 869, Mother and Father nonetheless assert the challenged jurisdictional findings still present a justiciable issue because they are harmed by the findings, as "sexual abuse bears a distinct stigma which causes an ongoing harm." Parents contend that *In re I.C.* held the appeal was not moot because the "jurisdictional findings that father sexually abused his stepdaughter had significant continuing consequences." Parents also cite *Wisconsin v. Constantineau* (1971) 400 U.S. 433 for the proposition that they have a liberty interest in their good reputations.

Neither case is apposite. The Court in *In re I.C.* made no pronouncement about the stigma attached to allegations of sexual abuse. Instead it simply accepted the parties' stipulation that the jurisdictional findings of the juvenile court had significant continuing consequences for father. (*In re I.C.*, *supra*, 4 Cal.5th at p. 884, fn. 2.) Moreover, *In re I.C.* involved allegations of actual sexual abuse by father on his stepdaughter. Neither parent here was found to have sexually abused Alyssa; rather, they were found to have been neglectful in failing to protect Alyssa from the sexual abuse perpetrated by her older brother. The amended petition clarifies Alyssa's parents were aware of "one occasion" of sexual abuse and allowed Aaron "unlimited access" to Alyssa; nowhere on the petition does it state that either

⁵ A finding of risk of future harm is not required to assert jurisdiction. (*In re J.K.*, *supra*, 174 Cal.App.4th at p. 1434.)

parent sexually abused Alyssa. Thus, we are unpersuaded by Father’s reliance on *In re I.C.* Finally, even if *In re I.C.* could be read as endorsing the adjudication of moot points to prevent the “stigma” of a finding of sexual abuse, we decline to extend such an endorsement to findings that parents failed to protect their child against sexual abuse by a third party.

Similarly, *Wisconsin v. Constantineau* does not apply. That case involved a challenge to a state statute allowing law enforcement to post, outside of liquor stores, the names of individuals who possibly neglected their families because of alcohol consumption. Because the posting occurred without notice or opportunity to be heard, the Court invalidated the statute. In this case, parents had notice and several opportunities to be heard, including testifying at the jurisdictional/dispositional hearing. Their liberty interest in their reputation was preserved.

Significantly, parents have not articulated why the jurisdictional findings they challenge could adversely affect future dependency or family law cases. There is no ongoing litigation or custody dispute between Mother and Father that would be affected by the findings. Of Mother’s and Father’s four children, three are adults and the remaining child—Alyssa—is 17 years old and will reach the age of majority in February 2019—less than one month. Finally, based on a review of the record, we find no defect or other extraordinary circumstances or unfair future consequences that compel us to exercise our discretion to entertain this moot appeal.

DISPOSITION

Mother's and Father's appeals are dismissed.

STRATTON, J.

We concur:

BIGELOW, P. J.

RUBIN, J.*

* Presiding Justice of the Court of Appeal, Second Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.